IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 267 of 1999

in

SPECIAL CIVIL APPLICATIONNo 3887 of 1986

For Approval and Signature:

HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

S.T WORKERS' UNION

Appearance:

1. LETTERS PATENT APPEAL No. 267 of 1999

MR NAVIN K PAHWA for Appellant No.

MR ANANT S DAVE for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE D.K.TRIVEDI

and

HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 12/11/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.K.TRIVEDI)

1. The appellant-Gujarat State Road Transport Corporation has filed this appeal and challenged the judgment and order passed by the learned Single Judge of this court in Special Civil Application no. 3887 of 1986 on 5.12.97. We have heard Mrs.Sangeeta Pahwa learned advocate for the appellant and during hearing she has taken us through the original petition and the order under challenge passed by the learned Single Judge as well as the award passed by the Industrial Tribunal Ahmedabad while deciding Reference (I.T.) no. 865/82. It is her contention that the learned Single Judge ought not to have dismissed the petition filed by the appellant-Corporation, in light of the provisions of Sec. 11(A) of the Industrial Disputes Act and once the respondent-workman has accepted the legality of the inquiry held against him and after inquiry when the order of withholding of five increments with cumulative effect was passed, the Industrial Tribunal was not justified in granting reinstatement in modifying the order of punishment passed against the respondent-workman and further that the learned Single Judge was not right in dismissing the petition. She has also placed in service the decision in the matter of Gujarat State Road Transport Corporation V/s Prabhashanker K Acharya reported in 1992(2) G.L.H.354. According to her, though the learned Single Judge had relied on the said decision, however, the Industrial Tribunal has no jurisdiction to entertain the reference as contemplated under Sec. 11(A) of the Industrial Disputes Act.

2. The respondent-workman i.e. respondent no. 2 is duly served in this appeal. Considering the submissions made before us and as found from the record, it transpires that due to industrial dispute reference was made for adjudication in view of the order passed by the Dy.Commissioner of Labour, Ahmedabad under the provisions of Industrial Disputes Act, 1947 dated 08.12.1982 and the dispute was with regard to the order passed by the authority against the workman for withholding increments for five years with cumulative effect and for such monetary loss, the Industrial Tribunal has disposed of the said reference being Reference (I.T.) No.865/82 as per judgment and order dated 29.03.1986. The statement

of claim of the workman was filed by the S.T.Workers' Union at exh. 4. It is his case that the workman was working as conductor in the Nadiad depot and a chargesheet was issued against him in respect of the incident which has taken place on 01.06.1979. As found from the chargesheet, the workman was on duty as conductor in a bus routed for Nadiad-Tharad on 01.06.1979. The charge levelled against the workman was that he has not issued two tickets to passengers and it is only after he saw the checking party namely Inspector of the Corporation, has issued ticket and the workman conductor has, before issuing ticket, recovered a sum of Rs.10.40ps. from two passengers. On inquiry, the order of stoppage of five increments with cumulative effect was passed which according to the respondent-Corporation was not illegal and unjust.

3. In the said proceedings, written statement was filed by the Corporation by highlighting that the workman was guilty for not issuing tickets to two passengers and recovered a sum of Rs.10.40ps. A punishment order was passed withholding five increments with cumulative effect. The said order was passed by the Disciplinary Authority. Two appeals were filed by the conductor and these two appeals were also turned down and the punishment imposed on the appellant is proper and reference be dismissed by holding that no case is made out by the workman concerned. The Industrial Court while considering the claim put forward by the parties, has also examined the original documents of the inquiry and though the contention was taken by the workman that inquiry was not in accordance with law governing the principles of natural justice, however, a pursis was filed by the advocate on behalf of the workman that the workman is not challenging the legality of the inquiry and thereby admitted that inquiry conducted against him is legal and proper. The Industrial Court has, accordingly considered the charge against the workman which according to the chargesheet is that the respondent-workman has recovered fare of Rs.10.40ps. from two passengers, however, had not issued ticket till the time the bus was checked by the Inspector. It is the case of the corporation that the workman has cheated the corporation. The reply of the workman was that in that bust 8 to 10 passengers were going from Ahmedabad to Mahesana and they have boarded the bus from Ahmedabad and he had issued tickets, but out of these passengers due to oversight, issuance of tickets to two passengers was left out. However, he has also issued tickets immediately and his intention was not to misappropriate any money and it was his mistake. The Industrial Tribunal has accordingly

while examining the contentions raised before it coupled with the record has modified the order of punishment by considering that the punishment imposed on the workman is very harsh and substituted the punishment to the workman by withholding his three increments without cumulative effect and passed order that the difference payable to the workman as a result of these directions shall be paid to them within three months of coming into operation of this award.

4. The learned Single Judge has in turn while considering contentions raised before him had in turn considered the decision of the Division Bench in the matter of Prabhashankar K Acharya (supra), held that since the findings given by the Labour Court, both on the question of the finding of guilt and on the question of quantum of punishment are within the realm of permissible discretion as per the principles enunciated in the aforesaid decision and accordingly no interference was required while exercising writ jurisdiction under Article 227 of the Constitution of India. In view of the above order under challenge, it is also to be noted that the petition was filed by the respondent-corporation under Article 227 of the Constitution of India and further the decision of the learned Single Judge is also based by taking such petition under Article 227 of the Constitution of India. In light of the decision in case of Ishwarbhai Narottambhai Patel V/s K.H.Trivedi & Ors. reported in 2003(3)G.L.R. page 1878 of the Division Bench of this court and as per the principle laid down that even the L.P.A. is not to be entertained when the petition is filed under Article 227 of the Constitution of India. Even on that on ground, this court is also to dismiss the petition as according to us award passed by the Industrial Tribunal wherein he has exercised his discretion and modified the order of punishment against the respondent-workman and when the Special Civil Application filed by the appellant-Corporation was under Article 227 of the Constitution of India, the learned Single Judge has accordingly dismissed the petition by holding that no interference is required in exercise of writ jurisdiction under Article 227 of the Constitution of India. In view of above, we are of the view that this is not a case where we are not required to interfere in respect of the order under challenge and accordingly appeal deserves to be dismissed. Accordingly it is dismissed with no orders as to costs.

(D.K.TRIVEDI, J)

(SHARAD D DAVE, J)

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